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ABSTRACT

The first part of this paper discusses the events leading up to the federal district court's May 18, 1980 decision in "Kelley et al. vs. Metropolitan County Board of Education of Nashville." The decision rejected a Nashville-Davidson County, Tennessee, school board's rezoning plan and called for an end to busing in grades 1 through 4 and a return to neighborhood schools. The events described, covering the history of Nashville's desegregation efforts from 1955 to 1980, are divided into five stages: (1) 1955 to 1971: minimal efforts to comply with Brown vs. Board of Education; (2) 1971 to 1976: the comprehensive remedy--busing; (3) 1976 to 1979: plaintiffs oppose inequities; (4) 1979 to February 1980: the board's response--more busing; and (5) March 1980 to May 1980: legally approved resegregation. Following a review of each of these periods, the paper discusses Nashville's projected return to neighborhood schools as a consequence of three factors: the perceived failure of the 1971 desegregation plan, the perceived high social, educational, and financial costs of transportation in a declining economic environment, and the apparent decrease in support for busing among black leaders. The paper concludes by discussing possible implications of the court's decision and its July 27, 1982 overturning by the Sixth Circuit Court. (JBM)

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In a paradoxical decision, the federal district court in this case resegregated grades 1-4 in response to declining enrollment and inequities in the existing desegregation plan. The discussion focuses on how and why this decision came about.

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NEIGHBORHOOD SCHOOLS: THE NEW(?) LEGAL RESPONSE TO ENROLLMENT DECLINE AND DESEGREGATION

by

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Peabody College of Vanderbilt University
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This paper is one of several products emanating from the research titled Organizational Responses to Decline. The complete list (to date) is as follows:

1. Berger, M. Two paradoxes in managing decline: Comprehensive planning and participation. In Kae H. Chung (ed.). The 1982 Academy of Management Proceedings. Loveland, Colorado: Lithographic Press, 1982, 334-338.

   This paper was also awarded the "1982 Best Paper in the Public Sector Division" of the Academy of Management at its 1982 Annual Meeting in New York, August, 1982.

2. Berger, M. Class size is not the issue. Paper presented at the National School Board Association Annual Meeting, Atlanta, April, 1982.

3. Berger, M. Organizational Responses to Decline: Summary Report. Submitted to the National Institute of Education, December, 1982.

4. Berger, M. Managing enrollment decline: Current knowledge and future applications. Peabody Journal of Education, 1983, (Forthcoming).*

5. Berger, M. Neighborhood schools: The new (?) legal response to enrollment decline and desegregation. Urban Education, 1983, (Forthcoming).**

6. Berger, M. Retrenchment policies and their organizational consequences. Peabody Journal of Education, 1983, (Forthcoming).*

7. Berger, M. Stages in decline: How educational organization scales down. Educational Administration Quarterly, 1983, (Under review).**

8. Berger, M. Studying enrollment decline (and other timely issues) via the case survey. Educational Evaluation and Policy Analysis, 1983, (Forthcoming).**

9. Berger, M. Why communities protest school closings. Education and Urban Society, 1983, (Forthcoming).**

10. Boone, C. The effects of succession on organizations in decline. Doctoral Dissertation, Peabody College of Vanderbilt University, Nashville, Tennessee, April, 1982.

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NEIGHBORHOOD SCHOOLS: THE NEW(?) LEGAL RESPONSE TO ENROLLMENT DECLINE AND DESEGREGATION

When school boards are faced with responding to the dual pressures of enrollment decline and court-ordered desegregation, they turn reluctantly to the strategy of closing under-utilized or segregated neighborhood schools. Closing schools and consolidating students into other attendance centers involve several trade-offs. On the one hand, such changes eliminate administrative, custodial, and utility costs at the closed school and increase facility utilization, economies of scale, and minority percentages at the consolidated school. On the other hand, these actions rob a neighborhood of a major source of identification, threaten property values, constrain after-school participation, limit parental involvement, and increase white flight (Armor, 1979; Boyd, 1979; Cuban, 1979; Divoky, 1979; Peskin, 1980; Tyler, 1980).

Despite the trauma, many school boards have closed neighborhood schools in order to bring their districts into line with the fiscal and desegregation realities of the 1970's and 1980's. In fact, school closings seem more a part of the education strategy now than at any time in recent history. Will this trend continue? Are neighborhood schools gone forever?

In May, 1980, after reviewing 24 years of desegregation efforts in Metropolitan Nashville-Davidson County, the federal district court rejected the rezoning plan of the school board, as well as the plan drawn up by a group of citizen intervenors. The court issued guidelines which called for, among other things, the end to busing for desegregation purposes in grades 1-4 and a return to the use of neighborhood schools. Since neighborhoods in Nashville are segregated, by and large, the effect of this decision was legally-mandated resegregation of the lower grades.[1]

The revolutionary aspects of this ruling should not be underestimated. First, this was not the typical case of a conversion from a dual school system to a unitary one. The district had implemented a Swann-type[2] remedy since 1971. Second, a dramatic role reversal occurred in this case: the white majority of the school board, acting on the advice of its lawyers and three desegregation experts (two white and one black), recommended to the court more busing to achieve a better racial balance, whereas the testimony from the witnesses for the black plaintiffs implied less busing, more neighborhood characteristics in the assignment plan, and the desirability of majority black schools. Finally, the judge was considered a liberal, and hence, was expected to facilitate desegregation rather than to retard it.

The purpose of this paper is to describe the evolution of this resegregation decision and to try to explain why it came about. The discussion begins with an annotated chronology of the events surrounding this "second generation" effort to remedy racial segregation.[3] This chronology will provide a common framework for the theoretical discussion in the second section. In the third section, speculation is offered on whether the events in this district indicate a trend back to neighborhood schools and the end of massive busing to achieve desegregation.

THE EVENTS SURROUNDING THE COURT ORDER

This section describes the events leading up to the court's decision in Kelley et al. vs. Metropolitan County Board of Education of Nashville on May 18, 1980. Data for this study were collected from the Court's Memorandum Opinion, the city's daily newspapers (which provided extensive coverage of the proceedings on a day-to-day basis), participant observation at public meetings, and in-depth interviews with parents, board members, and school personnel.

The events from 1955 to 1980, which the court described as "this district's tortuous, twenty-five year history of desegregation efforts," (Wiseman, 1980, p. 1) are divided into five stages:

Stage 1. 1955 to 1971: Minimal Efforts to Comply with Brown

Stage 2. 1971 to 1976: The Comprehensive Remedy - Busing

Stage 3. 1976 to 1979: Plaintiffs Oppose Inequities

Stage 4. 1979 to February, 1980: The Board's Response - More Busing

Stage 5. March, 1980 to May, 1980: Legally-Approved Resegregation

Stage 1. 1955 to 1971: Minimal Efforts to Comply with Brown.

During this period, the reluctance of the Nashville Board of Education to dismantle its segregated school system is apparent. The class action suit to enforce Brown is temporarily resolved when the Sixth Circuit Court vacates the stay from the lower court on December 18, 1970, fifteen years after the filing of the original complaint.

September 23, 1955	Plaintiffs Kelley et al. file a lawsuit under Brown I to enjoin the defendant board from continuing to operate a segregated school system.
January 21, 1957	The board submits a desegregation plan that would desegregate grade 1 in 1957-58 and one additional grade each year thereafter.
June 19, 1958	The district court approves the board's plan. No other significant action is taken for eleven years.
November 6, 1969	Plaintiffs now move to prevent the board from purchasing new school sites, building new school facilities, and/or expanding existing facilities. The district court directs the board to devise a comprehensive plan for a unitary school system to maximize integration.
August 25, 1970	The board submits a plan, but the district court issues a "stay" pending the resolution of several landmark (and pertinent) Supreme

Court desegregation cases (Swann particularly).

December 18, 1970 — Sixth Circuit Court vacates the stay and reinstitutes district court's order.

Stage 2. 1971 to 1976: The Comprehensive Remedy - Busing.

This period is characterized by continued frustration as the board attempts to implement a plan patterned after Swann vs. Charlotte-Mecklenburg and the plaintiffs find the plan unacceptable. The period ends when the plaintiffs reinstate their earlier petition for injunctive relief.

July 15, 1971 — Hearings in the district court produce a plan from the board, a plan from the plaintiffs, and a plan from the Department of Health, Education and Welfare (DHEW) acting as consultant to the court. The Court adopts an ideal ratio of 15-35% black enrollment in each school and the DHEW plan of clustering, contiguous and non-contiguous zone pairings, and grade restructuring. Furthermore, 32 predominantly white schools in the fringes of the county are exempted from busing and the board is enjoined from construction (or use of portables) at schools with less than 15% black student enrollment (Wiseman, 1980).

Fall, 1971 — Both parties appeal. Defendants object to procedure, fixed ratios, and adverse effects on children's health; plaintiffs claim their plan would achieve greater desegregation and the DHEW plan places disproportionate burden upon black children.

Spring, 1972 — Circuit court affirms the district court on all grounds. Supreme Court declines to review the case.

1972 to 1976 — Numerous motions and reports are filed with the court with no replies forthcoming.

Stage 3. 1976 to 1979: Plaintiffs Oppose Inequities.

Late in 1976, the plaintiffs file a motion that the school board be held in contempt of court for its plans to construct various facilities and to close the only traditionally black high school located in the inner-city. This stage ends with the plaintiffs' petition for further relief.

1976 to 1979	Plaintiffs move the defendents be held in contempt for plans to close traditionally black high school and plans to construct schools which would, by their location, promote segregation. Plaintiffs also argue that for the past ten years black children have been bused out of the inner city to predominantly white neighborhoods for grades 1-4, whereas white children are bused into the city to attend formerly black schools for grades 5-6. Thus, an inequitable burden is placed on young black children. Plaintiffs further request the 1971 order be altered to require defendents to recruit, employ, and assign black personnel commensurate with black ratios in the system, to upgrade inner city schools, and to award attorney's fees.

Stage 4. 1979 to February, 1980: The Board's Response - More Busing.

The board goes through a comprehensive planning process involving expert technical assistance, community involvement, and bitter conflict. The result is a new desegregation plan to submit to the court.

August 27, 1979	Judge Thomas A. Wiseman, the fourth district judge to hear the case, concludes the 1971 order is no longer appropriate because, among other reasons, it excludes the county's periphery and thus constitutes de jure segregation. He orders the board to devise a new plan that involves the entire county.
January, 1980	Board spends countless hours developing a unitary plan. The process includes the proposal and reversal of many school closing decisions, rancorous opposition from white suburban parents, the call for an elected rather than appointed school board, the involvement of local politicians, the formation of a coalition between white and black parents whose schools are scheduled for closure, and the proposal to merge adjacent traditionally black and traditionally white high schools.

February 11, 1980

The board's plan is submitted to the court. It includes:

1. Establishing a four-tier grade structure;
2. Closing 14 elementary schools;
3. Closing the traditionally black high school and merging its students into the traditionally white school nearby;
4. Closing a new, suburban (white) high school;
5. Establishing an academic magnet school;
6. Extensive busing at a projected additional cost of $3.5 million;
7. Redrawing attendance zones to include the entire county;
8. With some exceptions, a ratio of 32% black enrollment in each school;
9. The number of schools at less than 50% capacity reduced from 22 to 14;
10. 95.8% of secondary students and 97.2% of elementary students attending schools within racial guidelines (compared to 67% and 57% currently) (Tennessean, February 10, 1980).

Reactions are mixed: the director of schools calls the plan "bold;" the black consultant disavows the plan and suggests the citizen coalition "hang together or hang separately;" a councilman from a growing, predominantly white suburb predicts whites would sooner "drop out or go to private school than go to the inner city;" three black board members object to the busing plan, calling the overwhelming busing burden on young black children "unpalatable;" the coalition requests and obtains intervenor status from the court to submit their own plan (Tennessean, February 26, 1980).

Stage 5. March, 1980 to May, 1980: Legally-Approved Resegregation

Extensive hearings are held on the board's plan, with testimony from desegregation experts and many witnesses. The court rejects the board's plan, rejects the intervenor plan, incorporates many of the suggestions from the plaintiffs, and directs the defendant board to institute, among other things, neighborhood schools for grades 1-4.

March - May, 1980

Hearings begin on March 3 and continue until closing arguments on May 1, 1980. Testimony is heard from the defendant board, citizen intervenors, and expert witnesses. The court receives hundreds of letters and three amicus curiae briefs (from the local education association, League of Women Voters, and the American Education Legal Defense Fund). Plaintiffs are given the opportunity to file an alternative plan but do not do so because of time constraints. Plaintiffs offer specific objections to the defendant's plan, recommendations, and suggestions to the court through their expert witness (Wiseman, 1980).

Trial highlights are as follows:

1. Three black board members register their dissent with the board's plan and are later called as witnesses for the plaintiffs (Tennessean, February 27, 1980).

2. Intervenors present their plan which calls for "voluntary desegregation" and the criterion that integration is achieved when 10% of the principal minority race is enrolled in any school (Tennessean, March 1, 1980).[4]

3. Judge Wiseman seeks white flight data after an administrator predicts more flight will occur if board's desegregation plan takes effect. A board study for the years 1970-76 shows a decrease of 19,066 in enrollment: 7,538 students due to birth rate decline and 11,528 due to desegregation. Later, data are introduced showing that white flight has increased from 8% in 1971 (the first year of busing) to 15% in 1980 (Tennessean, March 8, 1980).

4. The judge interrupts testimony and challenges the defendants to "plow new ground" in providing an integrated school system without relying solely on busing. He states that the city should not be governed by the poetic dictum "be not the first by whom the new is tried, nor the last to lay the old aside," pointing out that prior desegregation efforts might not be useful, particularly when they work additional hardships on those they were intended to benefit (Tennessean, March 13, 1980).

5. The judge questions whether desegregation has been effective as an educational remedy for prior discrimination. He reviews various studies and receives testimony that: (a) results vary de-

pending on what the researcher is trying to prove; (b) desegregation alone is not likely to produce better achievement scores for black children; and (c) the key to improving achievement levels of black students is racial integration in grades 1 and 2 rather than later (Tennessean, March 16, 1980).

6. Superintendent from Charlotte-Mecklenburg (the prototype for Nashville) testifies that school systems should design their plans to accomodate "what the community will reasonably support" even if that means catering to white prejudice. He says whites will not send their children to the inner city in the early grades. Thus, the burden falls on black children. Any plan to bus equally, he argues, will fail (Tennessean, March 22, 1980).

7. Calling any plan which takes into account white flight "racist," the plaintiffs' attorney states that a desegregation plan which is developed to overcome prejudice should not make concessions to prejudice. Although the board's desegregation expert testifies that desegregation works best when it is accomplished in majority white schools, the plaintiffs' attorney asks whether "havens of black majority" can be permitted to allow both black and white children to see that integration is not a one-way bus ride. The board's expert responds that "if you don't have white kids, you can't have integration" (Tennessean, March 30, 1980).

8. A black educator from New York, testifying for the plaintiffs, argues that the board's plan focuses on racial ratios rather than quality education. He states that the attempt to achieve a white majority in each school implies that there is something wrong in being black. Furthermore, he states that busing burdens should be shared proportionately by blacks and whites (Tennessean, April 1, 1980).

May 18, 1980

The new desegregation order is issued. The order notes: (1) the plaintiffs' objection to the disparate busing burden on young black children; (2) educational unsoundness of the four-tiered grade structure; (3) closure of five black elementary schools and the black high school; and (4) the inappropriate premise of the "rightness of whiteness" philosophy (i.e., white majority schools). The order rejects the intervenors' plan and the board's plan.

It issues these specific directives:
a. a three-tiered structure (K-4; 5-8; 9-12)
b. K-4 schools of a neighborhood character
c. ratios of 15% white or black at each middle school[5]

In summary, the district court judge was influenced significantly by the plaintiffs. The board's original plan was changed as follows: where the board established a four-tier grade structure, the court established a three-tier structure; where the board closed 14 elementary schools (perpetuating the disparate busing burden of black children from the inner city), the court allowed the board to design elementary schools K-4 on a neighborhood basis; and where the board projected majority white middle schools at 32% black with a 20% range either way, the court stipulated 15% white or black as the acceptable definition of a unitary district. By returning to neighborhood schools and allowing a lower percentage of white or black minority at each middle school, the court significantly backed away from previous legal precedents (Nashville Banner, July 27, 1980).

WHY THIS DECISION?

Theoretical Framework

The perspective which guides this discussion is an institutional one developed by Phillip Selznick (1949, 1957) and elaborated by a number of his proteges (Clark, 1956; Perrow, 1961; Sills, 1957; Zald & Denton, 1963 to name a few). At the heart of this perspective is a focus on the whole organization. Specific processes are analyzed in detail, but to extract a process such as responses to desegregation from the total picture is to rob it of its meaning. Next, institutional analysis concentrates on the "natural history" of events. Current crises are rooted in the past; no organization operates as if the situation were de novo. To understand the present, one must evaluate the forces that shaped it. Finally, the institutional perspec-

tive reveals the irony or paradox of the situation. Things are not always what they seem. It is important to look beneath the surface to uncover the underlying motives and values of the principal actors. Having done this, the fundamental contention is that an institution (the Nashville public schools in this case) is subject to powerful forces (internal and external) which cause it to displace (i.e., sell out) its original goals in order to adapt to the changing political, economic, and social circumstances.

Theory Application

In this section, the hypothesized reasons for the return to neighborhood schools in Nashville are discussed. First, it is argued that the seeds of this change were sown in the perceived failure of the 1971 Swann-type remedy. Next, it is asserted that the court believed busing (in the 1980's) created a self-defeating paradox: it promised equal educational opportunity, on the one hand, but at such high social, educational, and economic costs that, ultimately, it worked hardship on the very persons and system it was supposed to benefit. Finally, the contention is that decreased support for busing among black leaders led the court to a renewal of "separate and equal." Each factor will be discussed in turn.

1. The perceived failure of the 1971 plan. The court was quick to point out that the neighborhood schools plan was based on an evaluation and rejection of the efficacy of the board's proposed modifications of the 1971 Swann-type remedy.

> Were this court addressing the situation in this county as it existed in 1971, there would be no alternative but to order the implementation of a plan that entailed school pairings, non-contiguous zoning, and substantial busing.
>
> It is only after nine years of zoning and busing to achieve a desegregated system and the changes that have taken place in the community and in the attitude manifested by the school board that it is possible to re-evaluate the efficacy of the remedy incorporated into the 1971 order (Wiseman, 1980, p. 42).

One of the criteria the court used to evaluate the board's plan was "its realistic promise of achieving a unitary system." When the board proposed to extend desegregation to the perimeter of the county, to maintain 32% minority ratios at white schools, and to continue the disproportionate busing of young black children, it did so under the assumption that the legal precedent of Swann and the 1979 order required a remedy that would be "more of the same." Although in the short term the board's plan might achieve the proper racial mix, the court questioned whether these ratios could be maintained in the long run.

Based on the evidence presented, the court concluded that such ratios could not be maintained. Specifically, the court found that patterns of white flight since the 1971 order and the failure of minority students in white schools to obtain significant educational improvements suggested that previous desegregation efforts were less than fruitful and to some extent counter-productive. With this spectre hanging over the court, the approval of the board's more-of-the-same remedy was found unsatisfactory. New ground had to be plowed, otherwise deteriorization of the public schools was predicted.[6]

The "new ground" was a return to neighborhood schools. Neighborhood schools made sense for whites because such schools preserved the educational benefits of surburban residences without the costs of busing in the early grades. Presumably, white flight would be deterred. Neighborhood schools were functional for blacks because the inequity of one-way busing could be eliminated, at least in the lower grades.

2. The rising costs of busing. The court's decision to reject more busing was based not only on the failure of the 1971 desegregation plan to obtain a unitary school system in Nashville. It was also the natural conclusion of an analysis of the costs of continuing the busing policy. Why the court brought cost criteria into the decision is beyond the scope of this investi-

gation. The sole issue should have been equal educational opportunity. Costs have never been an explicit mitigating factor in such cases, although one might argue the "all deliberate speed" dictum implies the Supreme Court appreciated the costs of dismantling a dual system.

Nevertheless, the various costs associated with more busing played a significant role in this case. Specifically, the court evaluated the social cost of a public school system ultimately serving only the lower socio-economic segments of the community. It concluded that:

> Public education is the cornerstone of democracy, but public education without public support will almost certainly erode to the point that it will no longer represent a solid base upon which we can continue to build (Wiseman, 1980, p. 47).

The board's plan produced an unacceptable educational cost as well. First, the court believed the plan focused entirely on racial ratios and thus, failed to specify educational programs which would enhance the quality of education in the district.[7] Next, it proposed a four-tiered grade structure which the court speculated would have adverse effects on the liaison between parents and teachers and student participation in extra-curricular activities. Finally, it failed to account for the "alienating effects" of transporting young black children out of their own neighborhoods.[8]

From an economic cost standpoint, the board's plan also fell short of the judge's criteria. The court was aware of the national fuel crisis and the projection that the board's new transportation plan would add $3.5 million to an already strained budget. An assistant superintendent testified that elimination of the cost of transporting students in the first four grades would be sufficient to reduce the pupil-teacher ratio from 25:1 to 15:1 in those grades, and testimony from several experts stated that the remedial benefits of smaller classroom sizes would far exceed any benefits obtained from the "osmosis" effect of desegregation (Tennessean, February 26, 1980). Based on these findings, the court concluded:

> Some transportation will continue to be necessary. However, rational balancing of cost-benefit demands a consideration of alternative methods of transportation that may be more efficient and alternatives to transportation as a remedial device (Wiseman, 1980, p. 48).

For each of these cost factors, the court rejected the board's plan. Fresh options were needed to insure that the new desegregation plan would not socially, educationally, and economically "bankrupt" the district. Lo and behold, the fresh option was neighborhood schools. It held out the promise of preventing white flight, thereby saving the social costs of de facto segregation; it created a three-tiered structure, thereby purchasing closer parental and student involvement, and finally, it decreased the substantial costs of buses, fuel, maintenance, and drivers, and thus created the possibility that savings from reduced transportation could be directed toward the improvement of educational programs which, in turn, would boost parental confidence and support of the public schools.

3. Decreased support for busing among black leaders. The efficacy of the board's plan was also evaluated in terms of its relative burden on black and white children. It came as no surprise that the board's new plan - like the 1971 plan - placed a disproportionate busing burden on young black children. The court found that black children rode longer distances and:

> With few exceptions, black children do not attend the same school for grade one as for kindergarden. Also, with few exceptions, black children are bused out of their neighborhoods for grades 1-4 while white children remain in their neighborhoods for those grades (Wiseman, 1980, p. 46).

What was surprising was the ambivalence and decreased support for busing among black leaders. While it is undoubtedly true this decreased support was attributable partially to the disparate burden, the underlying theme from black witnesses was that busing should at least be equitable and, at best, should be minimized. A broad range of evidence indicated a softening of support among blacks for more busing. Testimony showed that black parents,

as well as whites, were more concerned with what happens at the end of the ride than with the ride itself (Tennessean, March 3, 1980). The plaintiffs' own expert witness (a black college dean) stated that a white majority at each school implied there was something wrong in being black (Tennessean, April 1, 1980). Third, the intervenor coalition, led by a locally-prominent black city planner, proposed a voluntary desegregation plan without substantial busing (Tennessean, March 1, 1980). Fourth, the plaintiffs' lawyer, a long-time Nashville civil rights activist, argued that busing harmed the self-esteem and racial pride of black youngsters. He wondered whether there would ever be "havens of black flight" (Tennessean, March 30, 1980). Finally, three black school board members testified against the board's plan, stating it placed a disproportionate burden on black children (Tennessean, February 27, 1980).

While the black leadership was divided on whether to bus and in what proportions, the testimony from the white desegregation experts was unequivocal. Their message was that any equitable plan to bus blacks and whites would ultimately fail; blacks must bear the burden to achieve a unitary school district (Tennessean, March 22, 1980). One white university professor put it succinctly: "Desegregation planners must balance the black community's desire for neighborhood schools with the white citizens' desire to attend them" (Tennessean, April 25, 1980).

In summary, it is hypothesized that at least three factors in this case led the court to return to neighborhood schools: (1) the perceived failure of the 1971 desegregation plan; (2) the perceived high social, educational, and financial costs of transportation in a declining economic environment; and (3) the apparent decrease in support for busing among black leaders.

DISCUSSION

One cannot but have sympathy for the district court in this case. It was presented with a nearly insoluble problem. If two-way busing was adopted, the legal precedents would be satisfied, but white flight and higher costs might also occur. If, on the other hand, the board's extensive one-way busing plan was approved, it might increase desegregation in the short term, but perpetuate the very inequities that brought the plaintiffs to court in the first place. The challenge was to walk a very thin line between a constitutionally permissable plan and a realistic, workable one. How did the court do this?

The court chose to emphasize the "workable" part of the dilemma. Judge Wiseman stated:

> Perhaps I'm over-stressing the word 'realistically,' referring to U.S. Supreme Court decisions requiring desegregation plans that can be expected realistically to 'work and work now.' But a remedy that does not work is worse than no remedy at all. We have to take reality into account, particularly after a nine year experience (Tennessean, May 2, 1980, p.1).

In practical terms, the judge decided that a "workable" plan should foster integration, deter white flight, revive parental and taxpayer support, and promote quality education (Tennessean, May 2, 1980). The first criterion was derived from the various Brown-related decisions. The latter four criteria came from the judge himself.

By defining the criteria so broadly, the court established the legal basis for a return to neighborhood schools. A narrower definition of the goals - one that focused on desegregation only - might have yielded a different type of remedy. It is important to emphasize the court's belief that the survival of desegregated education in the county was at risk. "No-way" busing in the early grades might equate the busing burden, prevent further deterioration of public support, and possibly redirect dollars into educational programs.

To obtain these goals, however, the court had to compromise the goal of a unitary system, as defined by a 32% minority ratio in each school. This compromise was chosen neither out of malice nor racist tendencies. To the contrary, it was selected out of extreme frustration with the negative effects of existing desegregation remedies (i.e., massive busing). The court's basic assumption was that public education in general, and desegregation in particular, would be better served if the previous legal definitions of a unitary system were loosened a bit. The irony is that the district court judge chose a "re-segregative" mechanism, namely, neighborhood schools, to attempt to achieve a more equitable desegregation plan.

DOES THIS CASE SUGGEST A NEW TREND?

How should we interpret the events of this case? Is this an isolated incident or does it represent a harbinger of things to come? On the one hand, it could be argued that this case is an unusual one and does not suggest the beginning of a legally justifiable resegregation movement. Several arguments support this view. First, it has been shown that this particular court was influenced by political, economic, and social factors. Therefore, it could be argued that if the legal precedents had received a higher priority, a different decision might have been made which strengthened desegregation. Second, it has been shown that the court used data which reflected substantial white flight and unimpressive black achievement gains. It could be argued that if other data had been presented, the court might have seen that white flight in the district was not as high as claimed and that black achievement had improved significantly. Finally, the chronology reveals that this district judge was frustrated with existing remedies and was anxious to find new and creative alternatives. Had the court felt more constrained by legal precedents, such a departure from conventional remedies might never have occurred.

On the other hand, it could also be argued that this case is indeed a signal of things to come. First, the courts have always been sensitive to political and economic influences (see Feagin, 1980 for more on this argument). Next, busing has led to mixed results (Rist, 1978; Stinchecombe and Taylor, 1980). With equivocal and contradictory evidence, courts are in a better position now to select data which support a negative interpretation of desegregation effectiveness resulting from racial ratios and extensive busing. Finally, this case may be important because it reveals a softening of support for desegregation (as a goal) and busing (as a means) in the black community. Rist (1980) has pointed out that without sustained and aggressive action by black leaders to challenge the inherent inequities in school districts, the desegregation movement will flounder.[9]

In conclusion, whether or not we are witnessing a resegregation movement is an important question. This paper has raised the issue and suggested that, in this one district at least, the court directed the school board to resegregate grades 1-4 in an innovative attempt to promote the survival of a unitary system throughout the district. The final irony in all of this is that the return to neighborhood schools is nothing more than a reincarnation of the "separate but equal" policy Brown was supposed to overcome in the first place. As the song says, "Everything old is new again."

EPILOGUE

Despite the fact that the court order was heavily influenced by the plaintiffs, the return to neighborhood schools decision, along with other elements of the court's plan, was appealed by the plaintiffs' lawyers to the Sixth Circuit Court in Cincinnati. The Cincinnati court issued a stay; upon appeal to the Supreme Court by the Nashville school board to

vacate the stay (and thus allow implementation to occur), the Supreme Court refused to review the case. Therefore, Nashville schools opened in the fall of 1981 under the existing 1971 desegregation plan.

On July 27, 1982 the major aspects of the district court's desegregation plan were overturned by the Sixth Circuit Court (Nashville Banner, July 27, 1982). Specifically, the Sixth Circuit rejected the neighborhood school concept and the proposed ratio of 15% black or white enrollment in any school, calling such policies "unconstitutional." The three judge panel, split 2-1 on the decision, sent the case back to the district court for further hearings. Buoyed by this 2-1 split and an eloquent minority opinion, the Nashville school board voted to appeal the ruling to the U.S. Supreme Court.

Whether the Supreme Court will hear the case, and if it chooses to hear it, how it will rule on this "second-generation" remedy, are the lingering issues in this continuing saga.

NOTES

1. Nashville is a southeastern city encompassing 530 square miles with a 1980 population of almost one-half million.

2. Swann vs. Charlotte-Mecklenburg Board of Education; 402 U.S. 1 (1971).

3. Second generation lawsuits do not focus on dismantling de jure segregation policies. Instead, they focus on whether desegregation remedies are achieving the spirit of Brown and its progeny (Graglia, 1980).

4. The intervenor citizen group is a bi-racial coalition of parents from: (a) a growing, predominantly white suburb; (b) a rural, predominantly white area; (c) a white neighborhood near the inner city; and (d) the almost totally black central city neighborhood. The court indicated it was surprised and gratified that citizens from these communities with diverse concerns and needs have bound together in the spirit of cooperation and industry. (Wiseman, 1980)

5. Other school closures, transportation, and educational improvements were stipulated in the court's memorandum opinion. These are omitted here because they are tangential to the return-to-neighborhood-schools issue.

6. It has been argued by one desegregation expert that the court overestimated the extent of white flight and underestimated the extent of gains in black educational achievement in this district under the 1971 plan. If these assertions are correct, then the court's conclusion of counter-productivity is inaccurate (see Hawley, et al., 1980 for a comprehensive review of the effects of desegregation).

7. This criticism was considered unfair by several observers. First, the board's plan was never meant to be an educational plan; it was a pupil assignment plan from the very beginning. Next, educational components were in place as a result of desegregation, although these were ignored by the court. Finally, the educational components devised by the court (e.g., multi-cultural education programs) were held in low esteem by educational experts when compared to the educational benefits of desegregation.

8. An expert for the intervenor coalition (the group advocating a voluntary desegregation plan) testified that there should be less emphasis on desegregation in the early grades because very young black children suffered psychological harm when they were bused to alien communities where they were in a substantial minority (Tennessean, April 26, 1980, p. 23).

9. There is reason to believe the ambivalence in Nashville's black community toward desegregation and busing is not an isolated feeling. After eight years of mandatory school desegregation, a growing number of critics - including black parents - say Boston's busing plan should be scrapped (Tennessean, June 13, 1982). Robert R. Spillane, the new superintendent of the nation's oldest public school system, favors abandoning the Boston desegregation plan:

> There's no question that the system is more segregated now than in 1974. Whatever the intentions of the court order, it has not achieved the goal the judge had in mind (p.14-A).

Larry Johnson, attorney for black parents in the Boston case, states that black parents who once asked the federal courts to intervene and force integration now want the courts to abandon busing and permit free choice.

Finally, Michael Ross, a Boston University sociologist who has studied the Boston schools since 1968, claims that integration has actually hurt the poor.

> It has bankrupted the schools financially, created an all-minority system in a white majority, and created two school systems: one for the wealthy who can afford private schools and a second-class system for poor whites and poor blacks (p.14-A).

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